

R E M A R K S

This paper is being filed in response to a non-final Office Action dated May 19, 2005. Applicants request a three (3) month extension of time and enclose herewith the requisite fee. Claims 1-49 are currently pending in this application. Claims 1-29 have been rejected, and claims 30-49 have been withdrawn from consideration. Please note that claims 30-49 have not yet been cancelled.

Applicants thank the Examiner for conducting a telephone conference with their attorney, Samuel Lee, on June 14, 2005 regarding the present Office Action.

Section 103 Rejections

Claims 1-13 remain rejected under 35 U.S.C. § 103(a) as unpatentable over the article "Pizza Inversion" by Brad Appleton ("Appleton article"). The Examiner asserts that the Appleton article separately teaches (1) folding one half of a slice of pizza over the other half ("the Half Fold") and (2) folding the pointed end of a slice of pizza towards the crust ("the End Fold"). (Appleton article, p. 4.) Although acknowledging the absence of any teaching or suggestion in the Appleton article to combine the two folds, the Examiner nevertheless asserts that it would have been obvious for the skilled artisan to apply the combined folds to obtain a closed pocket and prevent dripping of toppings and sauce. The Examiner further asserts that the percent of the folded end depends on the length of the slice and how far one wants to fold and that it would have been obvious to fold pizza slices having any configuration according to the claimed method. (May 19, 2005 Office Action at p. 2; January 29, 2004 Office Action at p. 3.) In the July 2, 2004 Office Action at p. 3, the Examiner reiterates this position by stating "one would be motivated to combine the folds to form a more closed pocket to prevent toppings and sauce from dripping out and also to reduce the size of the pizza slice which facilitates handling."

Claims 14-29 also remain rejected under 35 U.S.C. § 103(a) as unpatentable over the Appleton article in view of p. 447 of the cookbook titled "Cooking A to Z" ("the Cookbook"). The Examiner points to the Appleton article for separately teaching (1) folding one half of a slice of pizza over the other half and (2) folding the pointed end of a slice of pizza towards the crust. (Appleton article, p. 4.) The Examiner points to page 447 of the Cookbook as showing a pizza slice having one end substantially free of toppings. Although acknowledging the absence of any teaching or suggestion by the Appleton article to combine to two folds, e.g., folding the end

portion and then folding one half over the other half, the Examiner asserts that it would have been obvious for the skilled artisan to apply the combined folds to obtain a closed pocket and prevent dripping of toppings and sauce. The Examiner further asserts that it would have been obvious to make a pizza without any toppings at one end as purportedly shown in p. 447 of the Cookbook, because pizza is a very versatile food product.

In response to applicants' response filed on December 6, 2004 that the Examiner has not established a prima facie case of obviousness in view of the Appleton article, the Examiner asserts that applicants' arguments are not persuasive, because the skilled artisan allegedly would have been motivated to combine the two separate folds to form a more closed pocket.

Applicants respectfully disagree. First, the Examiner is using impermissible hindsight in view of a solution provided by the present application, because forming a pocket with a traditional slice of pizza or a personal sized pizza has not been known and would not have been obvious. Applicants request the Examiner to identify concrete evidence of motivation to combine and apply the two folds to a traditional slice of pizza or a whole personal size pizza. It is clear that the Appleton article does not teach or suggest such a motivation. Rather, the entire purpose of the Appleton article is to present a method to consume pizza slices quickly, while it is still hot, without burning a person's mouth, and its proposed solution is inverting one slice of pizza on top of another slice. (See e.g., Appleton article, pp. 1 and 2.) Accordingly, the reference to oozing is hardly of great concern to Appleton, who advocates his method for his (different) purpose regardless of oozing. Second, a traditional slice of pizza is not easily formed into a pocket, and, as a result, it would not have been obvious to the skilled artisan to combine the two separate folds. In fact, a pizza lover would never think to form a pocket by combining the two folds with a traditional slice of pizza or a whole personal size pizza. In fact, Applicants respectfully request that the Examiner ask fellow examiners, who regularly eat pizza, regarding the asserted motivation to form a closed pocket with a traditional slice of pizza or a whole personal size pizza. Lastly, Applicants respectfully direct the Examiner to MPEP 2143.01, especially the subsection title "Fact that the Claimed Invention is within the Capabilities of One of Ordinary Skill in the Art is Not Sufficient by Itself to Establish Prima Facie Obviousness." This section makes it clear that the Examiner's assertion that the claimed invention is "within the capabilities of the skilled artisan" is not an appropriate ground for an obviousness rejection without some documented support in the art for the asserted motivation.

In regard to applicants' argument that the Appleton article teaches away from using the end fold because "You don't get full slice coverage this way" (Appleton article, p. 4, under the paragraph titled "2.0 Singleton Slice"), the Examiner asserts that this is not teaching away. Rather the Examiner asserts that this disclosure recognizes the problem of topping oozing out. If, arguendo, the Examiner's assertion were assumed to be correct, applicants submit that the recognition of oozing toppings in the Appleton article is further evidence of nonobviousness. The Examiner relies on the Appleton article as evidence that (i) each fold is separately known and (ii) oozing toppings is a recognized problem. Yet, the Appleton article failed to disclose or suggest the claimed invention. In other words, if the combination of the two folds were as obvious as asserted by the Examiner (which Applicants dispute), the Appleton article would have disclosed the combination.

In regard to the cookbook, the Examiner acknowledges that the reference shows cheese throughout the surface (i.e., it fails to teach or suggest an end portion without cheese or other toppings). However, the Examiner asserts that the "cookbook suggests" the versatility in making pizza and that it would have been obvious to omit cheese in one area "if one wants to reduce the fat content and calorie of the pizza." Applicants again respectfully ask the Examiner to ask fellow examiners, who regularly eat pizza, whether this assertion is reasonable. (See Halperin Declaration, ¶ 10.) Pizzas without cheese are known. However, in such cases, cheese is absent throughout the entire pizza slice. No matter how versatile pizza is, the consumer would not omit toppings from only a tip portion of a pizza slice. (See Halperin Declaration, ¶ 10.)

In regard to the Halperin declaration, the Examiner asserts that the declaration (i) does not set forth any evidence to show how or why the combination of folds would not have been obvious to one skilled in the art, (ii) does not contain any facts to show that one skilled in the art would be discouraged from folding the pizza slice with both folds, and (iii) does not provide any evidence to support the statement that elimination of topping in a certain area would not have been obvious.

Applicants respectfully disagree and ask the Examiner to review the Halperin Declaration. Applicants specifically direct the Examiner to ¶ 9 of the Halperin Declaration, where Mr. Halperin states:

Further, I did not expect the combination of the two folds to provide a satisfactory result No one to my knowledge has previously developed a successful way to confer traditionally

baked pizza so that it can be eaten while not seated at a table without spillage of the cheese, sauce and toppings. In addition, no one to my knowledge has tried to commercialize a pizza folded in the manner depicted in the Drawings.

Applicants also direct the Examiner to ¶ 10 of the Halperin Declaration, where Mr. Halperin states:

To the contrary, the consumer probably would not accept a pizza with cheese and toppings missing from a significant area, absent folding. Moreover, although pizza can be configured to have different combinations of toppings . . . in different sections of the pizza . . . such pizzas would have the same toppings consistently throughout any particular section. The purpose of such combination pizzas, after all, is to allow consumers with differing preferences to order pizza having different combinations of toppings, where a slice has the desired combination of toppings consistently from center to crust.

These are all facts and evidence to show why it is not obvious to combine the two folds or eliminate toppings from a portion of slice of pizza. For example, Mr. Halperin did not have a reasonable expectation of success in applying both folds to a traditional slice of pizza.

Furthermore, in view of Mr. Halperin's vast experience and knowledge in the food industry, the fact that he is not aware of anyone using or commercializing the claimed method is a fact in itself.

Lastly, applicants enclose two additional articles that provide evidence of the unfulfilled need to provide pizza on-the-go. The first article is titled "Crunch Time in Fast Food" and was published by the Wall Street Journal on August 26, 2005. The article reports (at page 3, lines 1-3 of text) that certain new fast baking ovens have allowed Subway to begin testing pizzas. Yet nothing is mentioned about configuring a pizza according to the present invention. The second article is titled "Life on the Go Means Eating on the Run, And a Lot of Spilling" and was published by the Wall Street Journal on June 7, 2005. This article reports that people's eating habits are evolving from eating at a table to eating on-the-go. As a result, clothing and interiors of cars are increasingly stained from the spilled food, and entire new product categories from Procter & Gamble and S.C. Johnson have developed to remove those stains. In particular, applicants direct the Examiner to the last paragraph on page 3, which describes the stains from eating pizza on-the-go. Such stains could have been prevented by the pizza configurations of the

present invention. There is clearly an unfulfilled need in the market place for providing on-the-go pizza. Yet, none of the multi-billion dollar fast food companies (e.g., Subway or McDonalds) have been able to meet this unfulfilled need. The present method elegantly solves this problem by providing a configuration of a traditional pizza slice (or whole personal size pizza) that preserves the benefits and taste of traditionally baked pizza.

In view of all of the arguments presented above, applicants respectfully request withdrawal of these obviousness rejections.


Conclusion

In view of the remarks provided above, applicants submit that the present application is in condition for allowance. Reconsideration and allowance is respectfully requested.

Respectfully submitted,

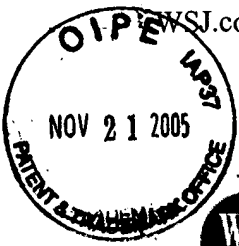
DERGOSITS & NOAH LLP

Dated: November 17, 2005

By: 
Samuel S. Lee
Reg. No. 41,938

Enclosures: Wall Street Journal Article, "Crunch Time in Fast Food"
Wall Street Journal Article "Life on the Go Means Eating on the Run, And a Lot of Spilling"

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PAGE ONE

Life on the Go Means Eating on the Run, And a Lot of Spilling

For Detergent Makers, Food
In Car Is a Perfect Storm
For New Stain Removers

By SARAH ELLISON
Staff Reporter of THE WALL STREET JOURNAL
June 7, 2005; Page A1

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On weekday mornings, Julie Formwalt piles into the car with her two kids, Megan, 4 years old, and Luke, 16 months. She hands them some breakfast, usually a muffin, a Pop-Tart or a banana. Then she drops them off at day care and rushes to her job as a real-estate lawyer in Kansas City, Mo.

There, she often pays a price for all that convenient on-the-go food she has given little Luke. "The crumbs and jelly on his hands end up on my shoulder, and sometimes I don't even notice it until I'm at the office," she says.



Julie Formwalt

A nation of snackers has become a nation of stainers. Americans are eating more and more of their meals outside the home, often while they're doing something else. The food industry has adapted to -- and helped create -- these new eating habits. One-handed snacks, like Yoplait's Go-Gurt and Campbell's Soup at Hand have given more choices to people eating in the car, at soccer practice and on the way to work. They have also created new ways to make a mess -- and new ways of coping, both homespun and commercial.

Resourceful consumers have adopted stain-avoidance tactics. To keep up with her hectic schedule, Ann Keeling, a public-relations executive in Cincinnati, occasionally eats in the car. To avoid dropping food on her clothes, she keeps a towel under the seat that she can throw across her lap to protect her suits. If she does get a stain on the way to a meeting, she puts some water on the towel and blots.

Thom McKee, a real-estate developer in Marriottsville, Md., has been more careful after one bad experience in which he showed up for a job interview with dried egg yolk on his tie. He had tried to eat an Egg McMuffin in the car on the way. He dabbed the stain with a napkin, but it didn't come out. Though he was offered the job anyway, "it made the whole thing a lot more stressful,

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and I ruined my tie."



Thom McKee

Mr. McKee has since learned to hold the bottom of the steering wheel in his left hand, with a food wrapper or container in the same hand. Then, "I lean forward, with my chin directly over the container and I hold the sandwich with my right hand."

These days, he avoids items with lots of trimmings. "While I love a double-beef Whopper with lettuce, tomato and onions, it is significantly easier and less messy to eat a bacon double cheeseburger, hold the ketchup and mustard," he says. "I would guess I only suffer a casualty every six months or so." Mr. McKee also wears black slacks whenever possible.

Packaged stain-removing products such as S.C. Johnson & Son's Shout spray or Reckitt Benckiser's Spray 'n Wash, applied before laundering, have helped in the past. But sales of many stain removers have slowed because people resist additional steps in the laundry room.

Many people continued to use home remedies to keep fresh stains from setting: vinegar for blood stains; white wine and salt for red-wine stains; seltzer for egg stains. The most popular prewash of all: furious scrubbing with a napkin dipped in water.

For on-the-go stains, the industry's ultimate goal is an instant remover -- one that works on the spot and eliminates the need for follow-up laundering. "The key to effectively removing stains is speed, pure and simple," says Brian Sansoni, a vice president of the Soap and Detergent Association in Washington.

In the late 1990s, S.C. Johnson developed Shout wipes, which promise to remove stains when rubbed on clothing. Orange Glo International introduced Oxiclean Instant Spot remover wipes in 2002. Now, **Procter & Gamble Co.** is introducing Tide to Go, a stain-removal pen designed specifically to get rid of food and drink stains.

"When you're on the go, you're eating with your hands a lot more, and you're not as prepared for the meal," says Kyle Garner, associate director of market research at P&G, which studied people's eating habits when determining how to design its stain pen.

The newest stain removers -- those that claim to work right away -- use a different technology from their predecessors. The pretreaters often use surfactants and enzymes that absorb the grease in a stain and help dissolve it in water. The new stain removers attempt to dissolve stains directly, without water.

There are hurdles. S.C. Johnson says its wipes are formulated to be gentle on the skin, so the stain remover doesn't provoke a skin rash. And it's still best to hit the laundry room later. "Shout wipes are a very effective product when you need to make the best of



Tide's new
Tide to Go stain-removal stick

Spot-On

Laundry detergent makers see opportunity in Americans' burgeoning stain problem.

Have you ever spotted or stained a piece of clothing while travelling?



Note: Based on a survey of 1,009 American adults, completed in April 2005.

Source: International Communications Research for the Soap and Detergent Association

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it," says Steve Peckham, an S.C. Johnson spokesman.

P&G says its product was developed specifically to work on freshly spilled food and drink stains. The company did special testing on grape and cranberry juice, coffee, wine, ketchup and barbecue sauce. P&G researchers say they want to alleviate the main feeling consumers have when they stain their clothes: embarrassment. The P&G product looks like a small highlighter pen, which discreetly fits in a purse or a jacket pocket. "No one needs to know you ever had a stain," says Julie Woffington, brand manager for Tide.

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But the new stain-removers might not work on the toughest stains, such as mustard, grass or ink. "We formulated the product specifically for food and drink stains because that is where we're seeing the greatest need," says Ms. Woffington.

Meanwhile, the potential for accidents keeps escalating.

Last year, 405 new food products were launched with the word "Go" in the name or in the advertising, according to Datamonitor's Productscan database of new product launches. That number has more than tripled from 134 in 2001.

Last month, Nestlé's Hot Pockets frozen sandwich brand introduced a new sandwich that the company says is "practically drip-proof." The company altered the product's "geometry," making it slightly larger than previous sandwiches, and thickened the dough that surrounds the filling. The company also altered the ratio of meat to sauce -- it won't specify how -- so that the filling wouldn't leak out onto consumers' clothing.

Even when people have the time to sit down to eat, they're out of the habit. Kate Ackerman, a 24-year-old nanny in Brooklyn, N.Y., was walking to the park the other day with her charge, 6-month-old Porter Marks. She bought a slice of breaded zucchini and mozzarella pizza.

"I had nowhere I needed to be," she says, "But I just kept walking." The result: The grease from the pizza dribbled down her arm and ruined her favorite shirt. "Growing up, we always ate as a family at the table," she says. "But now you just feel you have someplace to go or someplace to be, even if you don't."

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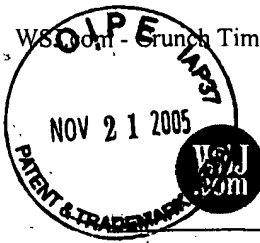
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Crunch Time in Fast Food

As Chains Go for Toasty Fare,
The Technology's the Thing;
Subway's Defensive Oven Play

By STEVEN GRAY
Staff Reporter of THE WALL STREET JOURNAL
August 26, 2005; Page B1

Toasted sandwiches are hot.

In January, the Subway sandwich chain armed itself with new high-tech ovens and began offering customers nationwide the option of toasting their sandwiches. McDonald's Corp., the world's largest restaurant chain, is testing deli-style sandwiches, some toasted, at about 400 of its 13,600-plus U.S. restaurants.

Even convenience stores like White Hen Pantry Inc. have started selling toasted sandwiches like the Country Club -- smoked turkey breast, ham, bacon and Swiss cheese.

Helped along by toasty offerings, sandwich-shop sales grew by about 9.5% last year, to \$16.8 billion, according to market research firm Technomic Inc. Potbelly Sandwich Works, a Chicago-based sandwich chain, says orders for its toasted sandwiches are growing steadily, thanks to heavy television promotion of Subway's toasted option. "Their advertising is helping spread the word," says Bryant Keil, chief executive of Potbelly's, which has about 85 restaurants, most in Midwest and Mid-Atlantic states.

"We've been eating burgers and fries for 50 years, so you look for alternatives," says Bob Goldin, executive vice president of Technomic. Aside from the novelty of toasted subs, he says, "made-to-order, customized foods are perceived as healthier."

The new toasted-sandwich option is catching on with customers like Tara Craigmiles, 34, of Chicago. Though she's a Subway regular, she'd only recently tried a toasted sandwich there. "It's more like a meal," she says, because it's "hot, moist and hot."

"To me," Ms. Craigmiles added, finishing her six-inch steak-and-cheese sandwich on an Italian roll, "it just tastes better."

But turning out lots of toasted sandwiches fast is much trickier than it might seem. The process often adds about 20 seconds to overall preparation time, which is a considerable delay in the fast-food industry. Slowing down operations can be disastrous, since many fast-food restaurants generate about 75% of sales at

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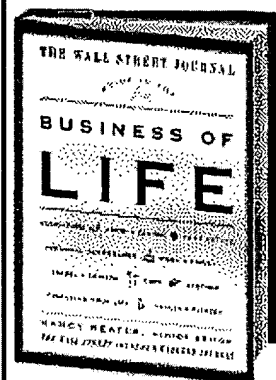
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the time-sensitive drive-through. Restaurants also fret about the impact of heat on the texture, taste and the smell of the food. Even slightly mistimed cooking can mean a burned sandwich.

Those were among the many issues that Subway, the world's largest chain of deli-style sandwich shops, faced in the summer of 2002, when it seriously began its march toward the toaster. The closely held Milford, Conn., chain was looking to move its menu beyond lunch to dinner and breakfast, using hot foods. Early on, executives ruled out conventional microwave ovens for toasting sandwiches because they can turn bread hard as a rock. Subway also needed durable ovens whose doors wouldn't break after heavy use.

Subway decided to try the Tornado oven, made by TurboChef Technologies Inc., a small Atlanta company whose claim to fame was creating an oven that could cook a pizza in one minute flat. The company was the brainchild of a mathematician and an engineer who in the early 1990s used a hairdryer and microwave to create an oven that could quickly zap pizza pies. Using "jet impingement" technology, heat is circulated within the Tornado oven at speeds of up to 60 miles per hour, while a vacuum at the oven's bottom pulls the heat down to wrap the food in a shroud of air. Bursts of microwave energy, meantime, cook the food from the inside out.

After one Subway franchisee put the Tornado through its paces, the chain soon began testing it at 400 U.S. outlets. Particularly impressive was the oven's ability to heat a typical sub sandwich through in 17 to 20 seconds. That's up to 12 times as fast as a conventional oven.

Subway franchisees pay about \$5,000 for each Tornado oven. TurboChef, meanwhile, is competing with a handful of firms, including Enodis, with brand names like the Lincoln DTF and the Merrychef Mealstream 500 Series, to supply other restaurants. Gaining the Subway contract, however, was a coup.

"For a fledgling company like TurboChef to win that project was a very significant milestone," says Steve Beshara, TurboChef's chief branding officer. The company had to deliver nearly 20,000 to Subway's 19,000 U.S. outlets in less than 200 days, Mr. Beshara says.

Initially, franchisees like Feroz Fazal, co-owner of 22 Subways in metropolitan Chicago, doubted that time-pressed customers would wait 20 extra seconds or so for a sandwich. In particular, he was concerned about whether the new oven would muck up the assembly process. His downtown Chicago restaurant near the city's new Millennium Park, in fact, to channel customers through quickly. "My goal was to never see a line when they walk by," he says.

At the same time, Mr. Fazal was watching in frustration as toasted-sandwich restaurants like Quizno's Master LLC and Potbelly popped up on corner after corner. Now, however, customers are ordering toasted sandwiches, with sales even higher during winter months at many Subway restaurants are up 10%, partly attributable to the toasted option.

Many Subway franchisees are ordering additional ovens to meet demand. The

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introducing the ovens in some overseas units, too. And the ovens have allowed Subway to begin testing pizzas to expand its dinner business and, for breakfast, various sandwiches, like Chipotle steak, cheese and egg.

Other chains are toying with a variety of ovens. McDonald's, for instance, is using a model in which a mechanism heats the bread before it's been loaded with meat, vegetables and other ingredients. Quiznos prefers a similarly "linear approach" because "the products go from a straight line from the time it's ordered until the time you cash out," says Tom Ryan, the chain's executive vice president for brand development.

"The product follows your customer flow," he says, and with Quiznos' approach, "you can put one or two sandwiches in [an oven] at a time."

Meanwhile, Starbucks Corp., the world's largest chain of coffee shops, is using various ovens, including some from TurboChef, in its early rollout of hot breakfast sandwiches. TurboChef's Tornado has proven particularly appealing to Starbucks because its design keeps the aroma of cooked food from seeping into the store. (Catalytic converters inside the oven cleanse the air.) Restaurants say this feature is appealing because it doesn't require a restaurant to invest in expensive ventilation systems, and the oven can be placed just about anywhere in the store.

Write to Steven Gray at steven.gray@wsj.com

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